

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Tradespersons	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

According to the information and documentation submitted, the firm's business is cabinet door manufacturing; providing custom made cabinet doors and trims to its customers. The worker provided his services as a sander and was responsible for successfully completing sanding jobs of cabinet doors. The worker performed his services pursuant to a verbal agreement to successfully sand cabinet doors, no terms, and was paid based on completing the jobs; done in time. The firm reported the worker's earnings on Form 1099-MISC at year end.

The worker received instructions on how to sand the cabinet doors properly. The worker was provided with his job assignments as, throughout the day, cabinet doors assembled by the carpenters would be brought to him to be sanded. The firm provided the necessary sanding equipment, work shop space for sanding, and supplies for the worker to perform his services. The firm controlled the amount it paid the worker for his services as the worker finished cabinet doors throughout the day. The firm terminates the worker's services as it told the worker not to come anymore.

Analysis

According to the information and documentation submitted by the firm and the worker concerning the work relationship, the firm provided the worker with instructions on performing the sanding jobs. The firm provided the worker with his job assignments. The worker personally performed his services at the firm's premises during the firm's established business hours.

The firm provided all necessary sanding equipment, materials, and supplies for the worker to perform his services. The firm controlled the amount it paid the worker for his services. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties could terminate the worker's services without incurring any liabilities.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.